

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of CenterPoint Energy's
Implementation of the Cold Weather Rule and
Reconnection Policies

ISSUE DATE: September 26, 2005

DOCKET NO. G-008/CI-04-2001

ORDER REFERRING ISSUES TO THE
OFFICE OF ADMINISTRATIVE HEARINGS
AND ISSUING NOTICE AND ORDER FOR
HEARING

PROCEDURAL HISTORY

On January 4, 2005, the Commission issued an Order initiating an investigation into whether CenterPoint Energy's practices, acts or omissions with respect to Minn. Rules, part 7820.1500 to 7820.2300 are in any way unreasonable or insufficient, or improperly prevent service from being obtained. The Commission accepted the offer of the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) to work with the Commission's Consumers Affairs Office (CAO) in conducting the investigation.

On June 21, 2005, the Residential and Small Business Utilities Division (RUD-OAG) of the Office of the Attorney General filed its final report, which concluded that CenterPoint willfully and systematically violated the Cold Weather Rule and related laws. The RUD-OAG recommended that the Commission penalize CenterPoint \$5 million, require it to make restitution to those who were harmed by its conduct, and direct it to modify its practices.

The Commission met on September 8, 2005 to consider what procedures, if any, would be appropriate to determine 1) whether CenterPoint violated the Cold Weather Rule (CWR), and 2) if it did, whether the violation was knowing and intentional, and 3) if so, what penalties/remedies are warranted.

FINDINGS AND CONCLUSIONS

This Order prescribes the procedures that the Commission will employ to determine 1) whether CenterPoint violated the CWR, and 2) if it did violate the CWR, whether the violation was knowing and intentional, and 3) if its violations were knowing and intentional, what penalties/remedies are warranted.

I. Position of the Parties

A. Residential and Small Business Utilities Division of the Office of the Attorney General

The RUD-OAG recommended that the record was already adequate for the Commission to determine that CenterPoint willfully and systematically violated the CWR and related laws and, consequently, to penalize the Company \$5 million, require it to make restitution to those who were harmed by its conduct, and direct it to modify its practices. The RUD-OAG has indicated that it does not believe that mediation will be useful to resolve the issues.

B. Energy Cents

Energy Cents agreed with the RUD-OAG's position but added that if CenterPoint is found to have violated the CWR, the Commission should require CenterPoint to adopt a bill payment assistance program to increase customers' ability to pay and to prevent service disconnections.

C. CenterPoint Energy

CenterPoint denied that it knowingly and intentionally violated the CWR. CenterPoint also argued that should the Commission disagree, it must pursue any penalty action in district court. Finally, CenterPoint contended that the Commission lacks the authority to create a claims process, through which customers could file a claim for damages against the Company.¹ CenterPoint has indicated it is willing to utilize mediation to resolve the issues raised in the current docket.

II. Commission Analysis and Action

The Commission finds that it cannot fully determine, on the basis of the record before it, issues raised in this matter regarding the Company's compliance with the Cold Weather Rule during the 2004-2005 heating season. The Commission will therefore refer these issues to the Office of Administrative Hearings for contested case proceedings.

NOTICE AND ORDER FOR HEARING

III. Jurisdiction and Referral for Contested Case Proceedings

As the Commission found in its January 4, 2005 Order initiating this matter, the Commission has jurisdiction under Minn. Stat. § 216B.17, subd. 1 to investigate allegations that CenterPoint Energy has violated Minn. Rules, Parts 7820.1500 to 7820.2300, which address disconnection during cold weather, including reconnection at the beginning of the cold weather months.

¹ At the September 8, 2005 hearing on this matter, the RUD-OAG reported that in its comments filed September 8, 2005, it had withdrawn its recommendation that the Commission establish such a claims procedure.

Since the Commission cannot on the basis of the record before it determine what appear to be mixed questions of fact and law turning at least in part on specific facts best developed in formal evidentiary proceedings, the Commission will refer the matter to the Office of Administrative Hearings for contested case proceedings.

IV. Issues to be Addressed

The parties shall address the following issues in the course of contested case proceedings:

1. Did CenterPoint violate the Cold Weather Rule (CWR)?
2. If CenterPoint violated the CWR, did it do so knowingly and intentionally?
3. If CenterPoint violated the CWR knowingly and intentionally, what penalties/remedies are warranted?

All other aspects of this matter, including monitoring the Company's preparation for and performance during the 2005-2006 Cold Weather Season, remain under the Commission's direct supervision.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Kathleen D. Sheehy. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7602.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minnesota Statutes §§ 14.57-14.62; the OAH's rules, Minnesota Rules parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minnesota Rules parts 7829.0100 to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The OAH conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minnesota Rules part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents. Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Discovery in this matter has already begun. See LEAD COMMISSIONER'S ORDER DIRECTING DISCOVERY AND REQUIRING FILING, issued August 11, 2005. The matter will now proceed before the Administrative Law Judge with the expectation that full discovery will continue as part of the contested case proceeding.

Any questions regarding discovery under Minnesota Rules parts 1400.6700 to 1400.6800 or informal disposition under Minnesota Rules part 1400.5900 should be directed to Janet Gonzales (651-201-2231), Manager of the Energy Unit, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2231; Roger Moy, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2217; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minnesota Statutes § 14.60, subdivision 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties. No statutory deadline imposes time constraints on the ALJ's development of the record and the Commission is retaining jurisdiction over the time-sensitive concerns such as monitoring the Company's preparation for and performance during the 2005-2006 Cold Weather Season,

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are CenterPoint Energy and the Residential and Small Business Utilities Division of the Office of the Attorney General. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Thursday, October 13, 2005 at 2:00 p.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

VI. APPLICATION OF ETHICS IN GOVERNMENT ACT

The lobbying provisions of the Ethics in Government Act, Minnesota Statutes §§ 10A.01 *et seq.*, apply to cases involving ratesetting, among others. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VII. EX PARTE COMMUNICATIONS

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minnesota Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers the three issues identified in Section IV (page 4 above) to the Office of Administrative Hearings for contested case proceedings.
2. Proceedings shall proceed as set forth in this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of CenterPoint Energy's
Implementation of the Cold Weather Rule and
Reconnection Policies

MPUC Docket No. G-008/CI-04-2001

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Kathleen D. Sheehy, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7602

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____